



# The State Constitution and School Funding in Washington: Cases and Lessons

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# Washington State Constitution, Article 9, sections 1 and 2

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- ❖ “It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.”
- ❖ “The legislature shall provide for a general and uniform system of public schools.”



# The Two Bodies of Education Finance Law

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- ❖ Statutes enacted by legislature. These statutes define:
  - ▶ A program of basic education
  - ▶ The formulae that fund basic education
  - ▶ Protections that permit the state to demonstrate that it has complied with its funding obligations.
- ❖ Judicial decisions rendered by the state Supreme Court and Thurston County Superior court.
  - ▶ These judicial decisions interpret both the state constitution and the statutes enacted by the legislature.
  - ▶ Ordinarily, superior court decisions are of limited precedential value; however, the state remains bound by certain trial court orders, and they form the “common law” that governs this topic.



# Separation of Powers and School Finance

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- ❖ Because K-12 finance is a constitutional issue, it involves tension between the legislative and judicial branches.
- ❖ Supreme Court in *School Funding I*:
  - ▶ “The ultimate power to interpret, construe, and enforce the constitution of this state belongs to the judiciary.”
  - ▶ “The effect of a judicial interpretation of the constitution may not be modified or impaired in any way by the legislature.”



# Chronology of School Funding Litigation in Washington

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- ❖ *1974—Northshore School Dist. v. Kinnear*
- ❖ *1977—Seattle School District v. State (“School Funding I”)*
  - ▶ *Superior Court, January 1977*
  - ▶ *Basic Ed Act enacted, 1977 legislative session*
  - ▶ *Supreme Court, September 1978*
- ❖ *1983—Seattle School District v. State (“School Funding II”)* (Superior Court)
- ❖ *1988—North Kitsap School District v. State (“School Funding III”)* (Superior Court)
- ❖ *2000—Tunstall v. Bergeson*
- ❖ *2002—McGowan v. State*
- ❖ *2004--LID case (ongoing)*



# *Northshore School District v. Kinnear*

## 1974

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- ❖ Court dismissed constitutional claims on equity and adequacy but this dismissal was largely overruled by *School Funding I*.
- ❖ “General and uniform”:
  - ▶ Variations in size and taxable property among districts does not demonstrate that the *system* is neither general nor uniform.
  - ▶ In a general and uniform system:
    - Every child has free access to certain minimum and reasonably standardized educational and instructional facilities and opportunities.
    - A child could transfer from one district to another without substantial loss of credit or standing.



# *School Funding I* 1977

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- ❖ The case known as *School Funding I* arose after widespread levy failures in the mid-1970s.
- ❖ The Seattle School District sued the state in Thurston County Superior Court.
- ❖ Judge Doran found that the state had neither defined nor fully funded basic education.
- ❖ After this decision, the legislature enacted the BEA.
- ❖ The state Supreme Court upheld the trial court decision.



# *School Funding I*

## 1977

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- ❖ Based on Article IX of the state constitution,
  - ▶ All children residing within the state's borders have a right to be amply provided with an education.
  - ▶ This right is constitutionally paramount and must be achieved through a general and uniform system of public schools.
  - ▶ The state complies with this mandatory duty only when it makes ample provision through regular and dependable tax sources.



# *School Funding I*

## 1977

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- ❖ Excess levies are not "regular and dependable" tax sources, because they vary from year to year and district to district.
- ❖ The legislature may authorize use of excess levies only for "enrichment" programs that the state is not required to support under its basic education obligation.
- ❖ The state may not cause districts to fund basic education with local levy funding.
- ❖ The court directed the legislature to adopt appropriate legislation, but declined to order specific relief.



# *School Funding I*

## 1977

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- ❖ In the absence of a legislative definition of basic education, one approach to determining funding adequacy is the “collective wisdom” view.
  - ▶ The court may look to what districts are actually doing as a benchmark of adequate spending.
- ❖ Staffing ratios and salaries are key factors in determining the costs of education.



# Basic Education Act of 1977

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- ❖ In response to the Superior Court decision in *School Funding I*, the legislature enacted the Basic Education Act of 1977.
- ❖ The BEA defined basic education to include:
  - ▶ A school year of at least 180 days
  - ▶ Minimum instructional hours for particular grades
  - ▶ Instructional content for each age group
  - ▶ Minimum ratios of certificated staff to students



## Basic Education Act of 1977, cont.

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- ❖ The funding formulae corresponded to program requirements.
- ❖ Funding is provided on a per-student FTE basis based on staff-student ratio
- ❖ Funding is based on allocation for salaries, benefits, and nonemployee-related costs.
- ❖ Additional funding factors address small schools.
- ❖ In addition, the legislature acted to reduce districts' reliance on levies by enacting the Levy Lid act.



# *School Funding II*

## 1983

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- ❖ *School Funding II* arose when the legislature attempted to recede from a funding level established in an earlier budget.
- ❖ The Seattle School District challenged the reductions.
- ❖ *School Funding II* is a superior court decision only; it was not appealed to the state Supreme Court.



# *School Funding II*

## 1983

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- ❖ Once the Legislature has defined and fully funded basic education, it may not reduce that level of funding.
  - ▶ Nor may the Legislature affect districts' abilities to provide basic education programs without resorting to levies.
- ❖ The state must fund "salaries necessary to assure local school districts the ability to hire and retain competent staff."
- ❖ Items within the state's definition of basic education are not restricted to the general apportionment formulas and ratios found in the BEA.



# *School Funding II*

## Items within Basic Ed

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- ❖ In addition to general apportionment, basic education includes:
  - ▶ Special education
  - ▶ Bilingual education
  - ▶ Remedial education (Learning Assistance Program)
  - ▶ Some pupil transportation
  - ▶ Vocational education



# *School Funding II*

## Items Outside Basic Ed

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- ❖ Basic ed does not include:
  - ▶ Gifted education
  - ▶ Food programs
  - ▶ “Urban factors”
  - ▶ Extra-curricular activities
  - ▶ Desegregation costs
  - ▶ Deferred maintenance
  - ▶ Enrollment decline costs



## *School Funding II* Defining Basic Ed

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- ❖ Basic education formulae and definition are not cast in “constitutional concrete.”
- ❖ Legislature has not only the right but the obligation to review, evaluate, and revise, if necessary, the education system of the state to meet children’s current needs.



## *School Funding III*

### Special Education Funding 1988

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- ❖ School districts challenged several aspects of the state's special education funding formula.
- ❖ The Thurston County Superior Court generally upheld the funding system.
- ❖ The state may fund special education based on assumptions about statewide averages, so long as a “safety net” was provided.
- ❖ The court left it up to the legislature to determine an appropriate safety net.



## *Tunstall v. Bergeson*

# Children in the Department of Corrections 2000

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- ❖ The Supreme Court ruled that:
  - ▶ The BEA did not define “children” for purposes of the constitution.
  - ▶ Even if the legislature had defined “children” in the BEA, its definition would not be controlling, because of the court’s role in interpreting the constitution.
  - ▶ For purposes of the state constitution, “children” means persons up to age 18, including those incarcerated in DOC facilities.



# *McGowan v. State*

## I-732 COLA

### 2002

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- ❖ Initiative 732 established a COLA for school employees and declared that the state must provide the COLA as part of its obligation to fund basic education.
- ❖ The Legislature appropriated COLA funding only for district employees in the state-funded salary base.
- ❖ Statutory interpretation: the state must fund the COLA for all school district employees.
- ❖ Constitutional interpretation: The initiative could not incorporate the COLA within the state's basic education funding obligation.



# *McGowan v. State*

## I-732 COLA

### 2002

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- ❖ I-732 COLAs were *not* basic ed because:
  - ▶ COLAs for all district employees are not a “program” of basic education.
  - ▶ Providing COLAs to employees who fall outside the definition of basic ed would result in an unconstitutional commingling of basic education funding with levy funding.
  - ▶ Providing COLAs to levy-funded employees would result in lack of uniformity, because expenditure of the same type of basic ed dollars will differ among districts.
  - ▶ The court refused to order a remedy.



# *Brown v. State*

## Learning Improvement Days 2004

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- ❖ Three Learning Improvement Days (LID) days were moved onto the state teacher salary schedule in 1999; districts received the funding only if they added the days to the base contract.
- ❖ The 2002 legislature eliminated funding for one of the three days on the salary schedule.
- ❖ A lawsuit claims that the Legislature had incorporated the three days into its definition of basic education and under *School Funding II* could not cut funding for the days.
- ❖ King County Superior Court is considering a summary judgment motion.



# Lessons from the Cases: Ample Provision

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- ❖ As the “paramount duty” of the state, K-12 education takes precedence over other state spending.
- ❖ The state’s funding obligation arises in the context of local school district control.
- ❖ Levies may be used to fund enrichment programs only
- ❖ The state may not cause districts to fund basic education with levy revenue.
- ❖ Basic education funding may not be tied to local levy funding.



# Lessons from the Cases: Definition of Basic Ed

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- ❖ Courts are willing to recognize basic ed “accretion” though legislative enactments.
- ❖ Though basic ed is not set in “constitutional concrete,” once a program is declared to be basic ed, it must be fully funded.
- ❖ The court has not expressly determined what sort of findings or studies would justify legislative revisions to basic ed definitions and formulae.
- ❖ Incorporation of a new item into basic ed should link the requirement to a substantive component of education.



# Lessons from the Cases: General and Uniform

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- ❖ Washington has not faced a true “general and uniform” lawsuit, because the BEA promotes uniformity of opportunity.
- ❖ Under BEA, “general and uniform” does not require equal expenditures per pupil.
- ❖ The “collective wisdom” analysis could be used to analyze the general and uniform requirement.



# Lessons from the Cases: Legislative Prerogatives

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- ❖ To avoid unintended liability, the Legislature must assert its constitutional prerogatives and make its intent clear.
- ❖ “Disclaimers,” findings, and statements of legislative intent are not necessarily binding but may guide courts.
- ❖ The state has a strong interest in preserving its ability to prove that it has fully funded its obligations.



# Appendix

## Case Citations

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- ❖ *Northshore Sch. Dist. v. Kinnear*, 84 Wn.2d 685, 727-29 (1974) (Hale, C.J., with three justices concurring).
- ❖ *Seattle School District v. State* (“*School Funding I*”), Thurston Co. Sup. Ct. Cause No. 53950, Memorandum Opinion at 51, 53, 56, 76.
- ❖ *Seattle School District v. State* (“*School Funding I*”), 90 Wn.2d 476, 496-97, 504-08, 513, 518-20, 523-26 (1978).
- ❖ *Seattle School District v. State* (“*School Funding II*”), Thurston Co. Sup. Ct. No. 81-2-1713-1, Oral Opinion at 109, 117, 127, 143, 148, 153-162; Findings and Conclusions at 22, 59-63; Declaratory Judgment (1983).
- ❖ *North Kitsap School District v. State*, (“*School Funding III*”), Thurston Co. Sup. Ct. Cause No. 85-2-00543-8.
- ❖ *Tunstall v. Bergeson*, 141 Wn.2d 201, 217-220 (2000).
- ❖ *McGowan v. State*, 148 Wn.2d 278, 293-94, 297 & n.3 (2002).
- ❖ *Brown v. State*, King Co. Sup. Court Cause No. 03-2-32289-0SEA